IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2274 OF 1988

Kirit R. Kapadia .. Plaintiff.

Versus

M/s.Bhairav Textile Mills .. Defendants.

Ms.Arti Janawi i/b.Rustomji & Ginwala for plaintiff.

None for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 9TH JULY, 2007.

P.C.:

1. This suit was filed as a Summary Suit and an application was made vide Summons for Judgement No.6191 of 1988 for judgement in terms of the reliefs sought in the plaint.

2. It appears that the Summons for Judgement was contested and thereafter unconditional leave was granted to the defendants to defend the suit. However, while doing so, this Court clearly directed the defendants that

they should file their written statement within six weeks from the date of the order and thereafter further directions would follow. The suit was accordingly directed to be heard as a commercial cause thereafter i.e. after the date of pronouncement of the order on Summons for Judgement.

3. Pursuant to this Court’s order, the written statement has not been filed within the time stipulated nor any application is made out for extension in that behalf. The order was passed in the presence of the defendants and their Advocate. No steps have been taken to defend the suit.

4. It is in such circumstances that the suit is listed for Ex-Parte decree before me.

5. On 2nd July, 2007, the learned counsel appearing for the plaintiff sought time to bring the original documents on record so also file an affidavit in proof of the claim.

6. There is due compliance made inasmuch as the original documents are filed along with the list / compilation. The same is taken on record and marked as

"X" for identification.

7. Affidavit of evidence in lieu of examination-in-chief has been filed by the plaintiff clearly stating therein that the sum of Rs.63,994.40 as claimed is due and payable. The documents so also their contents are proved. There is a clear statement in that behalf. The correspondence between the parties together with copies wherever received are also filed including the Advocate’s notice. Despite clearly stating in their letter dated 12th January, 1988, the defendants did not take steps as stated therein. In these circumstances and when there is none appearing for the defendants to cross examine the plaintiff so also the contents of the documents being undisputed, there is no impediment in considering the request of the plaintiff to pass a decree in their favour.

8. In the above facts and circumstances, there shall be a decree as prayed. Advocate’s costs to be computed as per rules. Refund of court fees, if any, as per rules.

(S.C.Dharmadhikari, J.)